

DEPARTMENT OF FINANCIAL INSTITUTIONS

TEVEIA R. BARNES, Commissioner of Financial Institutions
www.dfi.ca.gov



Opinion – “Software Company that Does Not Have Possession or Control of Money – Not Subject to Money Transmission Act”

May 16, 2013

Re: ____

Dear ____:

This is in response to your letters dated July 27, 2012, and February 7, 2013, in which you asked for the Commissioner’s concurrence with your stated opinion that your client, ____ (____), is not engaged in a business which is regulated by the California Money Transmission Act, Financial Code § 2000, et seq. (MTA). You furnished us with a copy of the agreement between ____ and a state chartered bank (FOB), a copy of the Terms and Conditions statement which is provided to customers, a screen shot of the internet site which the customer sees, and a sample receipt.

FACTUAL BACKGROUND

According to your letter, ____ uses proprietary software to track, service and account for gifts and other monetary transactions initiated by family members and friends (customers) for the benefit of individuals incarcerated in California county jails (Facility). Such monetary transactions are initiated by the customers through kiosks located in the various Facilities or through internet or telephone based transactions. ____ has entered into an agreement with FOB, which provides that FOB is responsible for the transmission of funds from the customer to the recipient inmate’s account at the designated Facility.

When a customer initiates a transaction, funds intended by the customer for the benefit of the inmate are transferred from the customer directly to an account at FOB. Customers also receive a Terms and Conditions statement when they initiate the transaction, informing them that they are engaging in a fund transfer transaction with FOB, and a receipt naming FOB when they complete the transaction. FOB has sole custody and control of those funds and takes title to those funds until it arranges to move the funds to the individual Facility’s bank account, where the Facility holds those funds in trust for the designated inmate. At no time does ____ have any ownership or control of the account or of any funds transmitted for the benefit of the inmate.

CALIFORNIA MONEY TRANSMISSION ACT

California Financial Code (FC) § 2030 (a) states: “A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed is or exempt from licensure under this division

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or is an agent of a person licensed or exempt from licensure under this division.”

FC § 2003 (o) defines “money transmission” as any of the following:

- (1) “Selling or issuing payment instruments.”
- (2) “Selling or issuing stored value.”
- (3) “Receiving money for transmission.”

FC § 2003 (s) defines “receiving money for transmission” as “receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.”

FC § 2010 (d) exempts commercial banks from the MTA.

APPLICATION OF MTA TO ____’S PRODUCTS AND SERVICES

____’s role as a provider of software does not constitute either receiving money for transmission or operating a money transmission business, as defined in the MTA. Commissioner’s Opinion No. 001 provides that software application providers that only receive instructions, orders or directions to transmit money or monetary value and do not actually or constructively receive, take possession or hold any money or monetary value for transmission, and do not advertise, solicit or hold themselves out as receiving money for transmission have not received money for transmission for purposes of FC § 2003 (s). Accordingly, and based solely upon the descriptions and representations in your letters and attachments, our view is that ____ would not be deemed to be engaged in any money transmission activities in California which are regulated by the Department of Financial Institutions. Furthermore, although, there is money transmission occurring, it is being conducted by FOB, which is an exempt entity pursuant to FC § 2010 (d).

This opinion is based solely on the facts presented in your letters and the documents attached thereto, and may change if any of the conditions or circumstances under which the company provides services are altered in the future. If you have any questions or comments, please give me a call at (916) 322-5979.

Sincerely,

/s/ Tony Lehtonen

TONY LEHTONEN
Senior Counsel

TL:is

cc: Robert Venchiarutti, Deputy Commissioner, Department of Financial Institutions, San Francisco